

1613840 (Migration) [2018] AATA 4437 (27 September 2018)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1613840

MEMBER: Margie Bourke

DATE: 27 September 2018

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Migrant) (Class BC) visa.

Statement made on 27 September 2018 at 2:11pm

CATCHWORDS

MIGRATION – Partner (Migrant) (Class BC) visa – Subclass 100 (Spouse) – spouse of the sponsor – practice and procedure – loss of entitlement to hearing – information on travel to Vietnam – Vietnamese marriage certificate – income tax returns – joint bank account statements – limited correspondence of showing address – opinion of acquaintances – interview at airport – ongoing relationship with another man – claimed to have a boyfriend – travelled overseas to meet another man – relationship issues with sponsor – loss of wedding ring – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65, 359

Migration Regulations 1994 (Cth), r 1.15A, Schedule 2 cl 100.221

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 22 August 2016 to refuse to grant the visa applicant a Partner (Migrant) (Class BC) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 28 April 2014 on the basis of her relationship with her sponsor. At that time, Class BC contained one subclass: Subclass 100 (Partner).
3. The criteria for the grant of a Subclass 100 visa are set out in Part 100 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Relevantly to this matter, the primary criteria include cl.100.221.
4. The delegate in this case refused to grant the visa on the basis that the applicant did not satisfy cl.100.221 because the delegate was not satisfied the applicant was the spouse of the sponsor within the meaning of s.5F(2) as the delegate was not satisfied the applicant and the sponsor had a mutual commitment to a shared life to the exclusion of all others as required by s.5F(2)(b).
5. The tribunal sent the applicant an invitation to provide information by letter dated 30 July 2018. The letter was sent by email to her then migration agent. The letter invited the applicant to provide information or confirmation in relation to the purchase of flights / tickets for the trip to Vietnam in June 2016. The letter advised the tribunal was interested in the name of the purchaser of the flights / tickets, and the date of the purchase of the flights / tickets. The tribunal invited the applicant to provide information from her bank records, her travel agent or the airline in relation to the travel booking.
6. The letter set out that the information was required to be received by 13 August 2018, and that the applicant could request an extension of time in which to provide the information. The letter set out that if the tribunal did not receive the information within the period allowed, or as extended, the tribunal may make a decision on the review without taking any further action to obtain the information. The letter advised the applicant that if the tribunal did not receive the information within the period allowed or as extended, the applicant would lose any entitlement she might otherwise have had under the Migration Act 1958 to appear before the tribunal to give evidence and present arguments.
7. On 9 August 2018 the tribunal sent a letter by email to the applicant's then migration agent, inviting the applicant to a hearing scheduled for 3 September 2018.
8. The tribunal did not receive any response to its invitation to provide information dated 30 July 2018, and did not receive any request for an extension of time in which to provide the information.
9. The tribunal advised the applicant by letter dated 20 August 2018 sent by email to the applicant's then migration agent, that it had cancelled the hearing scheduled for 3 September 2018. The tribunal advised the applicant in this letter that the tribunal considered it sent a valid request for information pursuant to s.359(2), and it had not received a response or a request for an extension of time. The tribunal advised the applicant in the letter dated 20 August 2018, that she had been advised that she would lose her entitlement to appear before the tribunal if it did not receive the information within the period allowed or as extended. The tribunal advised it had no alternative but to cancel the hearing, and the applicant had lost her entitlement to a hearing to give evidence and present arguments.

10. The applicant's then migration agent sent a submission to the tribunal acknowledging they had received the request for information and had prepared a response, but had not sent it because they had received the hearing invitation. The submission stated the applicant intends to provide the information by way of response at the hearing on 3 September 2018.
11. The applicant has lost her entitlement to a hearing pursuant to s.359(2), because the requested information or any response in relation to the request was not received within the period allowed or as extended, and the tribunal is unable to conduct a hearing in this review.
12. The applicant appointed a new migration agent and the tribunal received the appointment of representative form dated 22 August 2018 on that date. The new migration agent provided submissions and documents to the tribunal on 22 August 2018.
13. The tribunal advised the applicant by email to her new migration agent dated 23 August 2018, that the tribunal would not finalise its decision in this matter until 3 September 2018, the date of the previously scheduled hearing. The tribunal stated in its letter that this would allow the applicant to provide any further submissions, or information, or documents in support of the application for review.
14. The applicant's new migration agent wrote to the tribunal by email dated Friday 31 August 2018, requesting a further 7 days until 10 September 2018, to provide some additional statutory declarations from witnesses. The new migration agent submitted that the extension was required because the witnesses sign documents in their own time and at their own convenience. The tribunal considered the request, but refused the request for extension of time by letter dated 3 September 2018, which was the next working day after the request was received. The request for extension and the tribunal's response were both sent within the initial prescribed period. The tribunal advised the new migration agent that it had considered the request. The tribunal advised it had allowed the applicant until the date of the scheduled hearing to provide any information after she lost her entitlement to a hearing. The tribunal did not consider the attitude of witnesses doing things in their own time and at their own convenience was a reasonable basis for granting further time to provide information or submissions.
15. Accordingly, there was no hearing in this review. The tribunal has considered the information and evidence before it in relation to this matter.
16. For the following reasons, the tribunal has concluded that the decision under review should be affirmed.

17.

CONSIDERATION OF CLAIMS AND EVIDENCE

18. The issue in the present case is whether the applicant is the spouse of the sponsor within the meaning of s.5F(2).
19. SPOUSE/DE FACTO (cl.100.221(2)(b), (2A)(b))
20. **Whether the parties are in a spouse or de facto relationship**
21. Clause 100.221 requires that the applicant meet one of five alternative requirements. These include cl.100.221(2) and (2A) which require, among other things, that at the time of this decision, the applicant is the spouse or de facto partner of the 'sponsoring partner'. Unless the applicant was granted a Subclass 309 visa by Ministerial intervention, the 'sponsoring partner' is the person who was specified as the applicant's spouse or de facto partner or

intended spouse or de facto partner in the related Subclass 309 application, being an Australian citizen, permanent resident or eligible New Zealand citizen. Based on the sponsor's Victorian birth certificate, I am satisfied the sponsor is an Australian citizen by birth. Based on the sponsorship form dated 20 April 2014, and the application form lodged 28 April 2014, I am satisfied the sponsor is the person specified as the sponsor of the applicant in the application for the subclass 309 and the subclass 100 visa. In the present case the applicant claims to be the spouse of the sponsor, a 'sponsoring partner' within the meaning of that term.

22. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

Are the parties validly married?

23. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. Based on the Vietnamese marriage certificate and the certified translated copy of the marriage certificate I am satisfied that the parties were married in [Vietnam] and the marriage was registered [in] February 2014. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

24. I have considered the circumstances of the relationship based on the information provided by the applicant to the Department and to the tribunal by the applicant. I have considered the Department's decision record dated 22 August 2016, a copy of which was provided to the tribunal by the applicant. I have considered written submissions provided by the applicant to the Department and the tribunal. I have considered documents and evidence provided by the applicant to the Department and to the tribunal.
25. I accept that the application for the visa was lodged on 28 April 2014, which included the application for the subclass 309 and the subclass 100 visa. I accept the applicant was granted the subclass 309 visa on 30 December 2014.
26. I have considered the statement of the applicant dated 10 May 2014 provided with the application for the visa. I accept the parties were married in Vietnam, and applied for their marriage to be registered [in] January 2014, they had a wedding [in] January 2014 and the marriage was registered and they received the certificate [in] February 2014. I accept the sponsor departed Vietnam on 20 February 2014. Based on the information in the Department decision record I find the applicant departed Vietnam on 26 January 2015, and came to Australia.

27. *Financial Aspects of the Relationship*

28. The applicant provided her income tax return for 2015 in which the sponsor is recorded as her spouse. The applicant provided the tax assessment notice for the applicant and the

sponsor for the years 2016 and 2017. The applicant provided the income tax returns for both herself and the sponsor for 2018 in which they record each other as their spouse.

29. The applicant provided copies of a joint bank account for the 24 month period February 2015 to February 2017 which recorded transactions consistent with daily use, day to day household expenses, and deposits that were consistent with pooling of the parties financial resources. The applicant provided shorter bank statements from the joint bank account from February 2017 which record significantly less transactions, and the last statement records a final balance of \$[amount]. The applicant also provided an unnamed online bank statement for the period September 2015 to April 2016. Due to the fact it is unnamed, I give this statement no weight as evidence of the financial aspects of the applicant and sponsor's relationship.
30. In their statutory declarations provided to the Department dated 7 June 2016 both the applicant and the sponsor declare that they use their joint account for savings, and transfer some of their earnings to this joint account. The balance of the joint account at the end of the February 2016 period was \$[amount]. The six month statement records a total of \$[amount] credits and \$[amount] in debits, leaving a balance in August 2016 of \$[amount]. I find the joint account indicates the parties used it for pooling their resources and for day-to-day household expenses. The joint bank statements do not record the account was used for savings, or any successful savings, in the joint account.
31. Both the applicant and sponsor declare they have individual accounts, and their income is paid into their individual bank accounts. They declare they both work and contribute to the rent costs and household expenses. The applicant declares she uses her account to pay for the rent, expenses, bills and shopping. Only the joint account and the unnamed account bank statements were provided to the tribunal.
32. There is no evidence that the applicant and sponsor jointly own real estate or any major assets. There is no evidence before me that the applicant and sponsor have any joint liabilities. There is no evidence before me that either the applicant and sponsor owes a legal obligation in respect of the other.
33. There is some discrepancy between the bank statements provided of the joint account, and the statutory declarations of the parties in relation to the use of the joint account. However, I accept the joint bank statements are evidence of pooling financial resources and shared day to day household expenses. Therefore I find the evidence of the financial aspects of the relationship indicates that the parties share their daily expenses and pool their resources. The evidence of the financial aspect of the relationship is limited, but it indicates the parties are in a genuine and continuing relationship.

34. *Nature of the Household*

35. The applicant provided copies of telephone bills in her name, a [bill] in her name and a [receipt] in her name, and a letter from [a company] to the sponsor. These documents are provided by the parties as evidence of their residential address. I have also considered the address recorded on the joint bank statements. I have noted the addresses recorded as the home address on the tax returns are consistent with the claimed addresses of the applicant and the sponsor. I have noted that the addresses recorded on the documents in the applicant's name or in joint names indicate the parties were residing at the [Suburb 1] address up until 2017, and in 2018 at the [Suburb 2] address.
36. On the sponsor's tax return for 2018 the sponsor recorded the [Suburb 1] address as his postal address and the [Suburb 2] address as his home address. In the tax return the sponsor's name is recorded as [Mr A]. In this application the sponsor's name is recorded as

[a variation of Mr A]. The letter from [a company] to the sponsor, provided by the applicant to the tribunal, is addressed to [another variation of Mr A]. It records the sponsor's year and month of birth correctly. This letter is dated [in] December 2015, and is addressed to the [Suburb 2] address. I accept the letter from [the company] is to the sponsor, although the name is slightly different to the name on the sponsorship form. The applicant provided limited letters of correspondence to the parties as evidence of their residential address, and only one letter to the sponsor. Based on the letters provided by the applicant to the tribunal, and the dates and address on the letters, I have concerns that the evidence is not sufficient to indicate that the parties were living together in the same household. However overall, including the tax returns, the bank statements, and the correspondence, on balance the information provided indicates the parties resided at the same address.

37. I have considered that in the statutory declarations dated 7 June 2016 provided by the applicant and the sponsor, they declare that they share the household chores. The sponsor stated he usually cooks the dinner as he arrives home earlier. In her statement dated 30 July 2016 the applicant states that the sponsor cooked meals for the two of them on many occasions. I have considered that this is consistent evidence in relation to household tasks.
38. I have considered the statutory declaration of the friend of the sponsor, which refers to the applicant being introduced to and living with the family of the sponsor. In the statutory declarations provided by the applicant and the sponsor dated 7 June 2016 there is no reference to whether the parties reside with other members of the sponsor's family. In the applicant's statement dated 30 July 2016 she shared room in her mother-in-law's house. I accept that the parties resided with the sponsor's family. The statutory declaration dated 31 August 2018 of the sponsor records that the parties currently reside with his brother, [Mr B]. The sponsor declares that his brother [Mr B] is responsible for the rent and utilities, and they reimburse him.
39. There is no evidence of utility bills, leases or tenancy agreements. I accept that if the parties resided with family of the sponsor these documents would not be available. I note there is no evidence provided from family members or relatives.
40. The applicant provided photographs of the parties together, with other people, and at various locations. The applicant's representative submitted some of these photographs were taken of the parties together at their home.
41. There is no evidence before me that the parties have any responsibility for the care or support of children.
42. The evidence in relation to the nature of the household is limited, and the evidence of the living arrangements and sharing a responsibility for their household indicates the parties are in a genuine and continuing relationship.

43. *Social Aspects of the Relationship*

44. There were two statutory declarations dated 7 and 22 June 2016 provided by the applicant on the Department file, from school friends of the sponsor. The first deponent provided limited detail, but declared the relationship was genuine because the sponsor enjoyed talking about the applicant with the boys. Due to the limited detail in this first statutory declaration I give this document limited weight. The second deponent declared that the sponsor spoke fondly of the applicant, and that the fact the sponsor had introduced her to his family meant the relationship was getting stronger. This deponent declared the applicant held the same family values, and lived with the sponsor's family harmoniously, which should mean they have a long future together. This statutory declaration content about the 'introduction' of the applicant by the sponsor to his family is inconsistent with the applicant's

statement that both the parties' families were present at the wedding in Vietnam in January 2014. For this reason I give this second statutory declaration limited weight.

45. I have considered the photographs provided by the applicant. The representative submitted that the photographs should be given significant weight. The photographs are insufficient evidence that the parties represent themselves as a couple. The photographs are insufficient evidence of other persons' opinion of the parties' relationship. There is limited evidence that the parties represent themselves as being married to each other, but I accept the parties were married in Vietnam, and represented themselves as a married couple at that time. There is limited evidence of the opinion of the parties' friends and acquaintances of the nature of the relationship. I have considered the two statutory declarations provided to the Department in June 2016, and find there is limited evidence before me as to the opinion of acquaintances or friends about the nature of the relationship.
46. I have considered the statements and statutory declarations provided by the applicant and sponsor. I have considered that they have stated they have both travelled to Vietnam alone, and not together. I have considered their statutory declarations dated 7 June 2016 in which they declare they travelled recently together, and they eat out together with friends and family together. The photographs are evidence that the parties undertake social activities together.
47. The evidence of the social aspects of the relationship is limited and does not indicate the parties are in a genuine and continuing relationship.

48. *Nature of the Persons' Commitment to each Other*

49. In the Department decision record, the delegate recorded that the applicant was interviewed at [the] airport [in] June 2016, as several items were found in her luggage that suggested the applicant was in a relationship with a person who was not the sponsor. These items were recorded as including joint boarding passes for the applicant and the other person, personal text messages, and intimate photos.
50. The delegate recorded that the applicant stated in interview that the person in the photos on her phone was her boyfriend, and she had met him about one year ago. The delegate recorded the applicant had stated that she was in daily communication with her boyfriend over the year since they met. The delegate recorded that the applicant stated that the sponsor did not know about her boyfriend, and her boyfriend did not know about her husband. The applicant was recorded as having stated that she and the sponsor were fighting a lot, and that she was still living at the [Suburb 1] address but that she and the sponsor slept in different rooms. The applicant stated she did not wear her wedding ring as she lost it three years ago.
51. The applicant provided a response to the Department dated 30 July 2016, in relation to the interview at the airport, to which she was invited to comment or respond. The applicant provided a detailed statement which set out that her relationship with the sponsor had developed difficulties, due to living with his family, working different shifts, and the sponsor spending weekends with his friends and hobbies. The applicant claimed it escalated when the sponsor came home from a nightclub very drunk [in] June 2016, and she retaliated by getting tickets to go to Vietnam the next weekend to see her family and attend a friend's wedding. The applicant stated she met up with the person the Department thinks is her boyfriend [Mr C] with other friends in Da Nang, and they both had decided individually to fly to Saigon so they decided to travel together. [Mr C] agreed to show the applicant what a night club was like. A bar girl served them, and it was this bar girl who put the lipstick kiss marks on [Mr C's] face. The applicant stated that seeing the intimacy with the bar girl and

the male patrons made her upset, she had too much to drink, and [Mr C] looked after her and took her to his family's home to stay the night.

52. The applicant stated she was tired, and still a bit hung over and not her real self, when she was interviewed by the immigration officers at [the] airport. She stated the anger she felt towards her husband and the effect of the alcohol made her "out of control" when she was interviewed. The delegate recorded in the decision record that the interviewing officers made no observations that the applicant was affected by alcohol or otherwise unable to understand and answer the questions.
53. In the response dated 30 July 2016 the applicant stated that she was never in a relationship with [Mr C] as her boyfriend. She stated that she did not have an affair with [Mr C] or any man. She stated she had known [Mr C] as a friend for four years. She stated he knew of her marriage and he had been invited to the wedding, but did not attend. She stated she was too busy with work, study, travel, meals and house work to socialise.
54. In the statutory declaration dated 31 August 2018 the applicant declares that when she was in Vietnam she met another man in a nightclub and this man was [Mr C], and when she met [Mr C] she had an affair with him. I note this is different to the statement the applicant made to the interviewing officers at [the] airport [in] June 2016 as recorded in the Department decision record, and different again to her written response date 30 July 2016. The delegate recorded that the applicant told the interviewing officers at the airport [in] June 2016 that [Mr C] was her boyfriend, the intimate pictures on her phone were of her boyfriend and they had been communicating for a year. The applicant wrote and signed a response dated 30 July 2016 in which she stated she did not have an affair with [Mr C] and he was not her boyfriend but she went with him to Saigon and went with him to a night club. The applicant declared in a statutory declaration dated 31 August 2018 that she met [Mr C] at a night club and had an affair with him that continued for a short time.
55. The applicant and sponsor provided statutory declarations dated 31 August 2018 in which they declare that the applicant told the sponsor she had an affair in Vietnam, they have talked through their problems, and have now worked out their problems. The sponsor declares they are committed to each other. The applicant declares their relationship is strong and will not break.
56. I have considered the applicant's variety of answers in relation to the evidence found by the immigration officers at the airport [in] June 2016. I find that the applicant's immediate responses when confronted by the officers as recorded in the Department decision record are the most credible. I find the applicant did think that [Mr C] was her boyfriend. I find that the applicant had been in an ongoing relationship with [Mr C] over a period of twelve months. I find that the applicant's written response dated 30 July 2016 and her statutory declaration dated 31 August 2018 are not credible or reliable.
57. The applicant stated in her response dated 30 July 2016 that she had not been married for three years in June 2016 so she could not have lost her wedding ring three years ago. I accept that in June 2016 the applicant had only been married for between two years, four months and two years, five months; she is correct that she had not been married for three years. I accept that the applicant told the interviewing officers that she lost her wedding ring three years ago, and I do not find that this is a significant error of fact by the applicant. I do not accept that the applicant's answer that she had lost her wedding ring three years ago is evidence that she was affected by alcohol, or excessive tiredness, or being hungover, or anger, or was out of control when she was interviewed by the officers at the airport.
58. The applicant stated in her response dated 30 July 2016 that she and the sponsor had a period when they slept in separate beds, but in the same room, when they had difficulty

sleeping due to their different work shift times. I have considered the inconsistent evidence provided by the applicant, and the lack of credibility in her evidence. I accept the applicant and sponsor had problems in their relationship at the time the applicant was in a relationship with [Mr C]. I do not accept the applicant and sponsor shared the same room and separate beds for a short period of time. I find the parties slept in different rooms due to the difficulties in their relationship.

59. I have considered that the parties were married in Vietnam and it was registered [in] February 2014. I have considered that the duration of the relationship between the parties is in excess of four years at the time of this decision. I have considered that the evidence indicates that the parties have resided at the same address and I am satisfied they have lived together since the time of their marriage.
60. I have considered the statutory declarations from the applicant and the sponsor dated 31 August 2018, in which they both declare they are committed to the relationship and have worked through their problems.
61. The written evidence of the applicant and sponsor in the statutory declarations dated 31 August 2018 indicates that they have begun to provide support for each other. The written evidence of the applicant in her response dated 30 July 2016 is that at the time before she went to Vietnam in June 2016 she was lonely in the marriage as the sponsor would spend his weekends with his friends or with his hobbies. The evidence of the applicant is that there was an absence of companionship and emotional support at that time. I have considered and balanced the evidence of the degree of companionship and support the parties draw from each other, and overall I do not find the evidence indicates the parties provide each other with companionship or support.
62. As I stated above I find the applicant's answers recorded in the Department's decision record as more credible, then her subsequent responses dated 30 July 2016, and her statutory declaration dated 31 August 2018. The applicant provided the Department's decision record and her statutory declaration to the tribunal, and her response dated 30 July 2016 to the Department. I have carefully considered all these documents and find I cannot rely on the response and the statutory declaration provided by the applicant. I do not find the content of these documents to be credible or reliable. For this reason I do not accept the applicant's statements in her statutory declaration dated 31 August 2018 as credible or reliable evidence of her commitment to the relationship. I have assessed the evidence of the applicant and the sponsor, and the circumstances of the parties and I do not accept that the parties see the relationship as long term.
63. The evidence of the parties' commitment to each other is not sufficient evidence to indicate that the parties are in a genuine and continuing relationship.

64. *Findings*

65. I have carefully considered the evidence before me, and I am cognisant of the restrictions on the evidence available after the applicant lost her entitlement to a hearing. I have given weight to the evidence of the financial aspects of the relationship that indicates the parties pool their financial resources and share daily household expenses. I have given weight to the evidence of the nature of the household that indicates the parties' living arrangements and share domestic household responsibilities. I have balanced this with my assessment of the evidence of the social aspects of the relationship and the nature of the parties' commitment to each other, which I find was not sufficient to indicate that the parties were in a spousal relationship. Further I give significant weight to my conclusions that the applicant was in a long-term relationship with another person, [Mr C], for a period of 12 months and that she travelled overseas to meet up with this person. I give significant weight to my

findings that the applicant's subsequent statement provided to the Department dated 30 July 2016 and the applicant's statutory declaration provided to the Tribunal dated 31 August 2018 was not credible or reliable.

66. I find that the applicant's relationship with the person [Mr C] was more than sexual infidelity. I find the applicant was in a long term relationship with another person while claiming to be in a spousal relationship with the sponsor. I find the applicant and the sponsor have provided evidence to the Department and the tribunal that lacks credibility and reliability in 2016 and in 2018. I am not satisfied that the applicant had a commitment to the sponsor to the exclusion of all others for a significant period of time commencing when she started the relationship with [Mr C].
67. I accept that there is some evidence that suggests the parties were in a genuine and continuing relationship. However I have balanced this with the evidence that the applicant had formed a relationship with another person over a long period of time. For this reason I am not satisfied that the applicant and sponsor had a mutual commitment to a shared life as husband and wife to the exclusion of all others. For this reason I am not satisfied that the applicant meets the requirements of s.5F(2)(b).
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68. Given these findings the tribunal is not satisfied that the requirements of s.5F(2) are met at the time of this decision
69. Therefore the applicant does not meet the requirements of cl.100.221(2)(b).
70. There is no evidence before me that the applicant would meet the alternative criteria in cl.100.221(3) or (4).
71. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.
- 72.

DECISION

73. The Tribunal affirms the decision not to grant the applicant a Partner (Migrant) (Class BC) visa.

Margie Bourke
Member

74.

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).